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McLane, Graf,
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Middleton

Professional Association

FIFTEEN NORTH MAIN STREET • CONCORD, NH 03301-4945
TELEPHONE (603) 226-0400 • FACSIMILE (603) 230-4448

STEVEN V. CAMERINO
Internet: steven.camerino@mcclane.com

RECEIVED
JAN 27 2004

Office of Corporation Counsel
City of Nashua, NH

OFFICES IN:
MANCHESTER
CONCORD
PORTSMOUTH
NASHUA

January 27, 2004

Via US Mail and Fax 603-589-3259

David R. Connell, Esquire
Corporate Counsel
229 Main Street
Nashua, NH 03061

Dear David:

I am writing to follow up on the January 7th meeting between Mayor Streeter, Alderman McCarthy and you, on behalf of the City, and Don Correll and me, on behalf of Pennichuck Corporation. During the meeting, the Mayor and Alderman McCarthy indicated that the City intended to send us a follow up letter clarifying the information it was seeking from Pennichuck. As I indicated when we spoke on Thursday, the reason for my follow up call to you was that we have not received any correspondence from the City even though nearly three weeks have now passed since the meeting. Rather than add to the delay that has already occurred since our meeting, I thought it would be best if I provided a direct response to what I understand the City is now asking Pennichuck.

Based on my notes from the January 7th meeting, it is my understanding that the City is looking for Pennichuck to (1) provide a list of the questions that Pennichuck had regarding the City's November 20 offer that the City previously refused to answer and (2) provide a list of those changes that have occurred since the date of the acquisition agreement between Pennichuck and Philadelphia Suburban Corporation that have caused the value of Pennichuck to change.

This past Friday Pennichuck's board of directors met and, among other things, Mr. Correll provided an update on the status of the City's condemnation efforts. Members of the board expressed disappointment at the City's failure to follow up on the January 7th meeting and its continued failure to retain the outside consultants needed to analyze, evaluate and structure a possible agreement resolving this matter.

At this point, the company does not believe it is in the best interests of Pennichuck's customers, its employees or its shareholders to continue to meet with the City regarding the

David Connell, Esquire

January 27, 2004

Page 2

municipalization of water service. The company is particularly concerned that, although the City and the company have not had any substantive negotiations during the more than twelve months since the City-wide referendum, Pennichuck's willingness to attend meetings requested by the Mayor and Alderman McCarthy have fueled the perception that "active" negotiations are being conducted and that the meetings are likely to lead to an agreement of some kind. The company does not want to mislead the investing public, its employees or the citizens of Nashua that there is any progress being made toward municipalization, and we are concerned that the meetings are nothing more than an unproductive diversion from the day to day demands of serving the company's customers throughout Southern and Central New Hampshire.

Despite the City's request to do so, the company does not believe that it would be productive to rehash the questions that the City previously refused to answer regarding the November 20 proposal that Mayor Streeter publicly announced. Nor does the company believe it would be helpful to attempt to itemize the multitude of changes that have occurred since the date of the PSC agreement that affect the company's value. In summary, the company believes that it would be unproductive to hold any further meetings unless and until the City has engaged the necessary consultants to assist it in working through the many complex issues involved in municipalizing water service, whether through a public-private partnership, as we have suggested, or otherwise.

Sincerely,

Steven V. Camerino

Steven V. Camerino

cc: Donald Correll

McLane

McLane, Graf,
Raulerson &
Middleton

Professional Association

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APR - 5 2004
Office of the Consumer Advocate
City of Nashua, NH

476-1

SLC JB DC

OFFICES IN:
MANCHESTER
CONCORD
PORTSMOUTH

April 5, 2004

Debra A. Howland
Executive Director and Secretary
New Hampshire Public Utilities Commission
8 Old Suncook Road
Concord, NH 03301

Re: DW 04-048; City of Nashua

Dear Ms. Howland:

Enclosed for filing with the Commission in the above-captioned docket are an original and eight copies, along with an electronic copy on a computer disk in Word format, of Pennichuck East Utility, Inc., Pittsfield Aqueduct Company, Inc. and Pennichuck Water Works, Inc.'s Motion to Dismiss in Full or in Part or, Alternatively, to Stay Proceeding. I have assumed that the Commission views the three utilities as necessary parties to this docket and, therefore, I have not submitted petitions to intervene on their behalf. If the Commission believes that the utilities should submit petitions to intervene in order to participate in this proceeding, please let me know and I will do so.

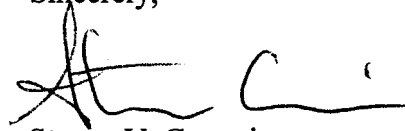
In accordance with N.H. Code of Admin. Rules Puc 203.04, I hereby certify that counsel for the Commission's staff and the Office of the Consumer Advocate have indicated that they take no position at this time on the relief requested by the enclosed motion. Counsel for the city of Nashua has indicated that Nashua does not consent to the relief requested in the motion.

Please note that the enclosed motion is not intended to set forth all grounds on which Pennichuck East Utility, Pittsfield Aqueduct Company and Pennichuck Water Works believe that the City of Nashua's petition in this case should be dismissed, but rather is intended to raise certain procedural issues that the three utilities believe should be addressed on an immediate basis. The three companies reserve the right to file additional motions to dismiss and raise other

Debra A. Howland
April 5, 2004
Page 2

substantive and procedural issues at a later date, depending on whether this proceeding continues forward, the scope of the proceeding and additional information that may become available.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steven V. Camerino', with a stylized flourish at the end.

Steven V. Camerino

Enclosure

cc: F. Anne Ross, Esq.
Robert Upton, II, Esq.
David R. Connell, Esq.

**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

City of Nashua Taking Of:

**Pennichuck East Utility, Inc.
Pittsfield Aqueduct Company, Inc.
Pennichuck Water Works, Inc.**

Docket No. DW 04-048

**PENNICHUCK EAST UTILITY, INC., PITTSFIELD AQUEDUCT COMPANY, INC.
AND PENNICHUCK WATER WORKS, INC.'S MOTION TO DISMISS IN FULL OR IN
PART OR, ALTERNATIVELY, TO STAY PROCEEDING**

Pennichuck East Utility, Inc. ("PEU"), Pittsfield Aqueduct Company, Inc. ("PAC") and Pennichuck Water Works, Inc. ("PWW") hereby move the Public Utilities Commission to dismiss the city of Nashua's ("City") Petition for Valuation Pursuant to RSA 38:9 filed with the Commission on March 25, 2004 or, alternatively, to stay this proceeding. In support of their motion, PEU, PAC and PWW state as follows:

1. PEU is a New Hampshire corporation formed in 1998. PEU has been granted operating authority by this Commission to provide water service in some or all of the municipalities of Atkinson, Derry, Hooksett, Litchfield, Londonderry, Pelham, Plaistow, Raymond, Sandown and Windham. PEU serves approximately 4,426 customers in the foregoing towns.

2. PAC is a New Hampshire corporation formed in 1997. PAC has been granted operating authority by this Commission to provide water service in a portion of the town of Pittsfield. PEU serves approximately 642 customers in the town of Pittsfield.

3. PWW is a New Hampshire corporation formed in 1852. PWW has been granted operating authority by this Commission to provide water service in some or all of the municipalities of Amherst, Bedford, East Derry, Epping, Hollis, Merrimack, Milford, Nashua, Newmarket, Plaistow and Salem. PWW serves approximately 24,267 customers in the foregoing municipalities.

I. The City's Petition Should Be Treated As Three Separate Eminent Domain Proceedings, Two of Which Should Be Dismissed in Their Entirety.

4. The City's petition in this case requests that the Commission determine the fair market value of the property of PEU, PAC and PWW in order to enable the City to take the property of those companies.

5. Despite the fact that PEU, PAC and PWW are separate legal entities, each with its own assets, its own service territories and its own corporate and legal history, the City included all three entities in a single petition that seeks to obtain the right to take all of their assets by eminent domain. The City's attempt to consolidate these three separate legal proceedings into one ignores the important differences among these entities, specifically the differences in the legal and factual issues governing the City's efforts to take their assets.

6. The legal and factual issues in these cases are plainly separate and distinct and may result in different determinations in each of the cases. For example:

a. Nashua's efforts to take the assets of PAC are subject to a competing municipalization effort currently being undertaken by the Town of Pittsfield. *See* Letter from Pittsfield Selectmen attached as Exhibit A.

b. Neither PEU nor PAC provides water service in the city of Nashua, nor have they ever done so, nor are they authorized to provide such service.

c. Neither PEU nor PAC owns any property in the city of Nashua.

d. The communities served by PEU have not taken the necessary votes regarding municipalization, and therefore there is no evidence at all regarding the "public interest" presumption referred to in the City's petition. Undoubtedly, residents of the ten communities served by PEU would not agree that a vote by Nashua residents provides a legitimate basis for determining what is in the public interest of their own communities.

e. It is unknown, and at this point unknowable, whether the communities served by PAC and PEU will ultimately join the regional water district referred to by the City in its petition, assuming that such an entity is ever formed at all. On information and belief, a number of the communities that are served by PEU are not even participating in the discussions regarding the charter of the proposed regional water district.

7. The City's efforts to consolidate these three proceedings from the outset and ignore the fact that PAC, PEU and PWW are separate legal entities will unnecessarily confuse the legal and factual issues that need to be resolved in these distinct matters. At a minimum, the Commission should sever the three matters into separate dockets and leave open the possibility that the three proceedings will follow separate tracks depending on the development of legal and factual issues in these cases.

8. To the extent that the City has any authority at all under RSA Ch. 38 to attempt to take the assets of PWW by eminent domain, there is absolutely no basis for it to take assets of companies that do not provide service in Nashua and own no property there. The fact that the corporations may have a common shareholder is insufficient to enable the City to make such a leap. The Commission's jurisdiction under RSA Ch. 38 does not extend to attempted takings by municipalities from an entity that does not provide service within the condemnor's municipal boundaries. The City's efforts to improperly extend the reach of RSA Ch. 38 to include such a taking is wholly without basis.

9. In addition, by attempting to take utility assets located in other municipalities, the City presumes that it may preempt the right of other municipalities to exercise their own RSA Ch. 38 rights to eminent domain. The City has no authority, under RSA Ch. 38 or otherwise, to do so.

II. The City Failed to Comply with the Requirements of N.H. Code of Admin. Rules Puc 202.11 and 204.01 and, Therefore, Its Petition Should Be Dismissed.

10. N.H. Code of Admin. Rules Puc 202.11(a) provides that "[a]ll petitions shall be accompanied by prefiled testimony and exhibits."

11. N.H. Code of Admin. Rules Puc 204.01(b) provides that "[w]ith the exception of petitions to intervene, petitions shall be accompanied by written testimony sworn to by the witness." The rule then specifies the material that is to be included in such prefiled testimony and the information that is required to support a petition to the Commission.

12. N.H. Code of Admin. Rules Puc 201.05 provides a specific process by which any party may seek a waiver of the Commission's rules if it believes that the rules would be burdensome or do not apply for some reason.

13. In this case, the City neither complied with the clear requirements of Puc 202.11 or 204.01, nor did it make any attempt to seek a waiver pursuant to Puc 201.05.

14. The City's failure to comply with the Commission's rules is more than a technical oversight on its part. The City rushed to file its petition with the Commission in order to attempt to legitimize the public threats it has been making against Pennichuck Corporation, the parent company of PAC, PEU and PWW, since November 2002 when the City's Aldermen first voted to pursue the taking.

15. It is remarkable that the City was unable to comply with the Commission's filing requirements, given that it has been contemplating this action for over a year. As long ago as March 26, 2003, in a letter to the Pennichuck utilities, the City stated that it "will *now* proceed

under RSA 38:10 to petition the Public Utilities Commission in order to complete the acquisition of the plant and property specified in Nashua's letters sent earlier under RSA 38:6." *See* letter from City of Nashua dated March 26, 2003, attached as Exhibit B (emphasis added). And just last month, the City's attorney informed the Nashua Aldermen that the City's petition was "already prepared and is ready to file." *See* excerpt from transcript of March 16, 2004 meeting of Nashua Budget Review Committee ("Budget Comm. Transcript") attached as Exhibit C. Not only was the petition prepared in advance, the City's consultant, as he told the Aldermen at the March 16 meeting, had already developed "some very hard numbers on what that purchase is going to look like and why those numbers are the price." *See* Budget Comm. Transcript attached as Exhibit D.

16. The City has posited no reason why it could not have complied with the Commission's rules. The City's failure to comply with those rules is particularly suspect given the long history of this case prior to its filing with this Commission. Incredibly, the vast majority of the documentation included with the City's filing is simply a copy of the materials previously filed in New Hampshire Superior Court *by Pennichuck Corporation and its subsidiaries*, rather than the type of factual and legal support required by Puc 202.11 and 204.01.

17. Without the additional facts that are a necessary part of the City's direct case in this proceeding, it is impossible to know exactly what assets the City is seeking to take, whether the City has the legal authority to take those assets (including whether the assets are even included within the scope of the vote taken by the citizens of Nashua in January 2003), what amount the City is proposing to pay for the assets it is attempting to take and the basis for that value, and numerous other matters.

18. The City's petition appears to be nothing more than a place holder, either to buy time to allow the City to prepare its case further or to respond superficially to the issues raised in

the litigation pending in New Hampshire Superior Court regarding the City's prior bad faith attempts to take Pennichuck Corporation and/or its utility subsidiaries. Perhaps the best evidence of the fact that the petition is merely intended to buy time is the fact that the entity to which Nashua says it intends to transfer the assets of PAC, PEU and PWW *does not yet exist* (and may never exist), yet it is the very existence of that entity and the intended transfer of assets to it that, according to the City, will support a finding by this Commission that the proposed taking is in the public interest.

19. At best, Nashua's petition is grossly premature. At worst, it was filed in bad faith and there is no factual or legal basis that can support the proposed taking. In either case, the petition should be dismissed in its entirety for failure to comply with the Commission's rules.

III. The City's Petition Should Be Dismissed Because the Regional Water District to Which the City Claims It Intends to Transfer the Utility Assets Does Not Exist.

20. Given the City's reliance on the creation of a regional water district to support its claim that the proposed taking is in the public interest, it is clear that the City's petition is premature and should be dismissed.

21. In order to assess the City's public interest claim, the Commission will need to know, among other things, which municipalities currently served by PAC, PEU and PWW are members of the district. At this point, not only is the membership of the water district unknown, the very existence of the district is in doubt.

22. Because the water district does not yet exist, there is no way for the Commission to determine who the owner of the assets to be taken will be or whether the proposed owner has the technical, managerial and financial ability to provide water service consistent with the quality delivered by PAC, PEU and PWW. A determination of public good will require the Commission, at a minimum, to determine that the new owner will be able to provide the same or better service than PAC, PEU and PWW. Simply put, the Commission cannot conduct a public

interest analysis without knowing who will own and operate the water systems in the twenty-two communities served by PAC, PEU and PWW and, in fact, it is a near certainty that many of the municipalities involved would have a very different position on whether the taking should go forward at all depending on whether the ultimate owner was the City of Nashua rather than a regional district.

23. Because the basic facts relied on by the City and necessary to resolve its petition have yet to be determined, the Commission should not proceed in this matter and should instead dismiss it in its entirety.

IV. To the Extent that the Commission Determines that Any Portion of this Proceeding Should Not Be Dismissed, the Commission Should Stay the Proceeding Until the Superior Court Rules on the Declaratory Judgment Petition.

24. On February 4, 2004, Pennichuck Corporation, PEU, PAC and PWW filed a petition for declaratory judgment in the Hillsborough County Superior Court, Southern District, Docket No. 04-E-0062 (the "Superior Court Litigation"), seeking that Court's intervention to protect Pennichuck Corporation and its regulated utilities' constitutional rights. The return date in the Superior Court Litigation is April 6, 2004.

25. The Superior Court Litigation raises a host of claims that could dispose of the City's petition without the need for the Commission to undertake what is certain to be a long and intensive proceeding regarding complex legal and factual matters, a proceeding that is likely to be exceedingly costly for the parties and potentially for the Commission. For example, the declaratory judgment petition in the Superior Court Litigation requests that the Court declare RSA 38:9-11, the very provisions invoked by the City in this proceeding, unconstitutional and violative of the three utilities' fundamental rights under Pt. 1, Article 12 of the New Hampshire Constitution because the statute does not provide for a trial by jury, a right that exists in other condemnation actions. In addition, the Superior Court Litigation will address the

constitutionality of the process set forth in RSA 38:1-13, including whether those provisions have resulted in an inverse condemnation of the utilities' assets without compensation.

26. In addition to addressing these constitutional infirmities, the Superior Court will also be determining whether the City is even authorized to bring the action that it has now filed with this Commission, given the City's failure to promptly file an RSA Ch. 38 proceeding with the Commission, and given that the provisions of RSA Ch. 38 do not appear to provide the City with the necessary authority to take assets in municipalities that are served by water systems that are not even physically connected to the system that serves Nashua and, in many cases, are owned by companies that do not provide utility service in Nashua.

27. Because the Superior Court Litigation directly implicates the process to be employed by the Commission in this matter and the legitimacy of the docket itself, it would be wasteful and inefficient for the Commission to proceed prior to a definitive ruling by the Superior Court. The additional expense of litigating this matter before the Commission, when a ruling from the Superior Court could dispose of the matter in its entirety, would also place an unnecessary burden on PAC, PEU, PWW and their customers. Such a use of public and private resources is not in the public interest.

28. For these reasons, PAC, PEU, and PWW request that, to the extent that the Commission does not otherwise dismiss any of Nashua's claims, any and all remaining dockets related to this matter be immediately stayed pending final determination by the New Hampshire Superior Court in Docket No. 04-E-0082 and any appellate rights that flow therefrom.

WHEREFORE, Pennichuck East Utility, Inc., Pittsfield Aqueduct Company, Inc. and Pennichuck Water Works, Inc. respectfully requests that the Commission:

A. Sever Nashua's petition into three separate dockets;

B. Dismiss Nashua's petition with regard to PAC and PEU on the basis that Nashua has no authority to take the assets of those companies pursuant to RSA Ch. 38 and the Commission has no jurisdiction to hear such a proceeding;

C. Dismiss Nashua's petition with regard to PAC, PEU and PWW on the basis that Nashua failed to comply with the requirements of N.H. Code of Admin. Rules 202.11 and 204.01 and/or that Nashua's petition is premature;

D. Alternatively, stay this proceeding pending final resolution of the Superior Court Litigation; and

E. Grant such other and further relief as may be just and equitable.

Respectfully submitted,

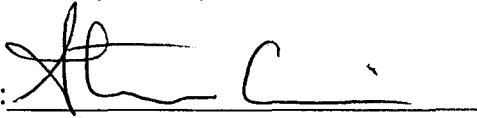
Pennichuck East Utility, Inc.
Pittsfield Aqueduct Company, Inc.
Pennichuck Water Works, Inc.

By Their Attorneys

MCLANE, GRAF, RAULERSON & MIDDLETON, P.A.

April 5, 2004

By:



Thomas J. Donovan, Esq.
Steven V. Camerino, Esq.
Sarah B. Knowlton, Esq.
15 North Main Street
Concord, NH 03301

CERTIFICATE OF SERVICE

I hereby certify that a copy of this motion has been forwarded to F. Anne Ross, Esq., Consumer Advocate, and Robert Upton, II, Esq. and David R. Connell, attorneys for the City of Nashua.

Dated: April 5, 2004


Steven V. Camerino

TOWN OF PITTSFIELD*Incorporated March 27, 1782*

DW 04-048
City of Nashua
Exhibit A to Pennichuck Motion
Page 1 of 2 to Dismiss

OFFICE OF SELECTMEN

P.O. Box 98

Pittsfield, New Hampshire 03263

603-435-6773

FAX 603-435-7922

April 8, 2003

Pittsfield Aqueduct Company, Inc.
Pennichuck Corporation
4 Water Street
PO Box 448
Nashua, New Hampshire 03061-0448

Dear Sirs:

At the 2003 Annual Town Meeting, under Article 23 of the Warrant, the Town of Pittsfield voted by ballot, 163 in favor and 6 opposed, to establish a municipal water system, and to authorize the Board of Selectmen to purchase, or otherwise acquire, the plant and water works of the Pittsfield Aqueduct Company, Incorporated for municipal use and for use of the inhabitants of the Town of Pittsfield, in accordance with RSA 38:4.

The Board of Selectmen, in accordance with such vote, and under the provision of RSA 38:6 hereby notifies the Pittsfield Aqueduct Company, Incorporated of such vote. The governing body, the Board of Selectmen, has determined that it is necessary for the Town of Pittsfield to purchase all of the property and utility plant within the Town of Pittsfield together with all of the records, plans, engineering documents; meter reading equipment and records; billing and collection materials and records; treatment plant records and maintenance and operations manuals; all tangible property, materials, assets and supplies; all intangible property and assets; all historical documents related to the plant and its property and operations; and such other items as may be necessary to operate and maintain the plant and its systems.

In accordance with the requirements of RSA 38:10 the Town inquires if the Pittsfield Aqueduct Company, Incorporated, a whole owned corporation of Pennichuck Corporation elects to sell the Pittsfield Aqueduct Company, Incorporated in its entirety, as identified, to the Town of Pittsfield.

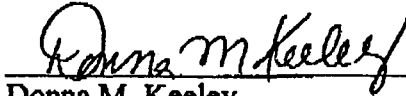
Representatives of the Town of Pittsfield are willing to meet with you to discuss the subject of acquiring Pittsfield Aqueduct and to engage in meaningful discussions pertaining to that subject. Please note that a reply is required by Statute within 60 days (RSA 38:7).

We look forward to hearing from you on this important subject.

Very truly yours,


Frederick T. Hast


Thomas E. Marston


Donna M. Keeley

Board of Selectmen



Mayor Bernard A. Streeter
Nashua, New Hampshire

March 26, 2003

Maurice Arel, CEO
Pennichuck Corporation
P.O. Box 448
Nashua, New Hampshire 03061

RE: City of Nashua Acquisition of Pennichuck Water System


Dear Mr. Arel:

This is in response to your recent letters indicating that your company is not willing to sell plant and property of the Pennichuck water system to the City of Nashua.

As you know, the City has determined that the acquisition is in the public interest based on the 78 percent vote of the people at the special election in January and the vote of the Board of Aldermen to acquire all plant and property of the three regulated utilities.

The City will now proceed under RSA 38:10 to petition the Public Utilities Commission in order to complete the acquisition of the plant and property specified in the City's letters sent earlier under RSA 38:6.

Very truly yours,


Bernard A. Streeter
Mayor

cc - Board of Aldermen

Sesquicentennial

Nashua City Hall • Mayor's Office • 229 Main St. • Nashua, New Hampshire, 03061-2019

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Email mayoroffice@ci.nashua.nh.us website: gonashua.com

Budget Review - 3/16/04

is on vacation so the suggestion is that we may want to hold this Resolution in committee. Do I have any motions with regard to R-04-13?

MOTION BY ALDERMAN DEANE TO HOLD O-04-13 IN COMMITTEE
MOTION CARRIED

R-04-14

Endorsers: Mayor Bernard A. Streeter

Alderman-at-Large Brian S. McCarthy

RELATIVE TO TRANSFERRING \$100,000 FROM GENERAL CONTINGENCY – ENERGY COSTS – ACCOUNT 591-86633 AND \$200,000 FROM ANTICIPATED BOND INTEREST – NEW – ACCOUNT 592-85011, TOTALING \$300,000, INTO CAPITAL IMPROVEMENTS – WATER SYSTEM ACQUISITION – ACCOUNT 699-07, TO HIRE CONSULTANTS AND ATTORNEYS FOR PUBLIC UTILITIES COMMISSION AND COURT PROCEEDINGS IN CONNECTION WITH ACQUIRING PENNICHUCK WATER WORKS

MOTION BY ALDERMAN DEANE TO RECOMMEND FINAL PASSAGE

ON THE QUESTION

Chairman Bolton

I understand that one of the consultants proposed to be employed, Mr. SanSoucy, is here and I think the presentation that appears to be set up is his. Am I right on that? With the acquiescence of the committee this might be an appropriate time.

Robert Upton, Esq.

What we thought the Board should know and this committee should know about are what the remaining steps were in this acquisition if you were to vote this money, and the city were to proceed. You've come through really at this point the most difficult part of what I call the RSA Chapter 38 acquisition procedure. It is not easy to get 2/3 vote of the Board and then the overwhelming confirming vote that you got of the City voters. When the towns along the Merrimack and some of the other rivers were thinking about buying the PSNH hydro in deregulation that was by far the most difficult part of the process for them was getting those votes.

The procedure going forward at this point is largely directed at two things; first convincing the PUC that the acquisition is in the public interest and then determining the price. It starts with a simple petition to the PUC, which is already prepared by the way and is ready to file – it relates the history of the proceedings and ask the PUC because the parties don't agree to determine what property is in the public interest for the city to acquire and to set the price. Remember that the city is asking thus far to acquire property outside of the City of Nashua so the PUC has to make a determination that acquiring that property is in the public interest. Notwithstanding the 2/3 vote of this council. By Statute that 2/3 vote creates a presumption that it is in the public interest, but because property outside of the city's boundaries is going to be acquired if you go forward with this the PUC has to make that determination.

EXHIBIT C

Budget Review - 3/16/04

Most likely Pennichuck, if you do go forward with this acquisition, will argue that it is not in the public interest so the PUC will have to make that determination. In a prior case, when a utility made this argument what the PUC did when it received the petition was bifurcate the issues, in other words split them up, initially dealt with the question of public interest first and then to the extent that the city wanted to go through with the acquisition after that determination was made it looked at value. I think that I prefer if we can to do public interest and valuation at the same time. It may be that the PUC is not going to let us do that. They are creatures of habit generally. Having bifurcated these issues in a prior proceeding it is likely that they would do that again, but I would prefer in this case to see value and public interest dealt with simultaneously because those questions are largely the same in this case because they are driven by rates. Rates are going to determine the value that you will have to pay for it and it will determine whether or not it is in the public interest. I think they are much more closely connected in a case like this where rates are going to be so important and I would hope that the PUC would deal with them together.

The resolution of those issues before the PUC is similar to litigation of any kind in any forum – there is a significant amount of discovery that occurs, there is a motion practice that occurs, and ultimately there is a trial. The only thing unusual are the time limits I think that the PUC generally puts on for discovery. They are more immediate than the Superior Court would require. It is a much faster turnover of discovery. The other thing that is a little bit unusual about it is the way direct evidence is presented. It is all done with written pre-filed testimony that everybody gets a chance to review before you actually have a trial.

Both of those questions and issues are expert driven – that is that the testimony of the experts is largely going to determine the outcome, and that is generally true with these kinds of cases. There are a couple of things the City can do I think to improve its position especially in the issue of public interest. The first I think is to complete the negotiations for the formation of the Regional Water District. We want those communities, those other communities, lined up to support our petition, and the Regional Water District will be I think the key to getting their support. The PUC and its staff has for a long time supported the idea of regionalization. If they think that will be one of the results of the acquisition I think that will work in the city's benefit if it goes forward with this acquisition. Likewise if we don't become a part of the Regional Water District I think it might work against us. What I am most concerned about are those other towns in which Pennichuck property is located not supporting us and have the PUC ask what is the benefit of just having the city acquire those assets and simply replace Pennichuck in the scheme of things.

Secondly it is important that the city present a united front. It is very important that the PUC in all of this see that the city has the political will to carry this acquisition through if the price is going to be right. If you decide to do this I hope that there won't be public second-guessing. The PUC reads the papers and it won't like that. Anyway after a trial the PUC makes a decision, which is appealable by either party to the New Hampshire Supreme Court. There aren't many reasons I can think of why the city would want to appeal unless they do something very unusual in setting the price or if it concluded that for example that the city couldn't acquire property outside of Nashua – I think that might be an appealable issue, but short of something like that I can't see a lot of reasons why I would ever recommend appealing a decision. The company on the other hand might appeal for a variety of reasons. Don't forget that we're taking

Budget Review - 3/16/04

– if we do this we are taking their operational companies, their regulated operational companies. They will be concerned about price. They will be concerned about trying to delay the process. They will be concerned about trying to preserve their assets.

After the price is finally set, RSA:38-13, which is a great and important provision permits you to decide within 90 days whether or not to acquire the property at that price. This is I think an extremely important right and it was built into the Statute in 1997 during that time that I was representing those towns that were seeking to acquire the PSNH hydros. Under eminent domain procedure, which was in effect at the time, a municipality when it took property – any kind of property, took a title to it immediately and then it would go fight about the value. Whatever price was set by the court the municipality was stuck with it. I thought especially having dealt with utility value for a fair bit of time that these were pretty enormous values for a municipality to get simply stuck with so I encouraged the legislature and they did it to give municipalities a second look at the acquisition after the price was set so that if it was too high, if everybody thought it was too high, that there was a procedure for an out. The city or town could say this is just too much money we don't want to do it at this price. I thought that was very important to have just because of the enormous values that you are dealing with when you are dealing with utility values.

Just as an example say the PUC sets a price of \$200 million for these assets and after they set that price and Mr. SanSoucy and the financial people conclude that in order to pay that you would have to raise rates enormously you probably aren't going to want to do this. There is that opportunity for you to then get out. I know immediately what you are thinking because it is the first thing that always comes to my mind is if we go all the way through this and they set a price of \$200 million or anything that is above where we want to do it we are going to have spent a lot of money on guys like me and SanSoucy and the other experts in this thing and we will not get it back because the only way you get it back is if you actually go forward with the purchase you can bond all of that – you can put all of that into your revenue bonds and then that gets paid for instead of by taxpayers it gets paid for by the ratepayers. While that is true if you get to the end of the day and decide not to go forward that money has been spent and you don't get it back remember why you are getting out – you are getting out because that value has been set too high. You can now use that value, that too high value that was too high for you to buy it – that is a determination of fair market value that you can use for setting your assessment level.

What I tried to do was give you an example – your current assessment of property in Nashua is about \$54 million at a 75% ratio. I didn't know what your tax rate was – it used to be around \$23 so I used \$23 as that tax rate. The tax on \$54 million is \$1.2 million. If the PUC set the value of the Nashua property for example at \$100 million essentially doubling so that you didn't want to get out that tax would be \$2,300,000 for an increase of about \$1.1 million. I think what I am saying is the increased tax that you might get – that you would get from that increased value is one method that you might use to make sure you get yourself paid back for what you spent on acquisition costs. It is a interesting double sword. The company is in the position where it wants to get the absolute most that it can get from the PUC, but if it gets too much and you back out that upper level is then going to be the level of taxation and they will get hammered with taxes so it is a double-edged sword.

Assuming you vote to acquire the property following the setting of the price by the PUC you then have to move forward and issue revenue bonds and close the purchase and that always

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takes longer than you think. In a nutshell that is really sort of what you would have to do going forward from here. I haven't referred to this point the lawsuit against the city, but that obviously is going to have to be defended as you go along too. I don't see a huge amount of risk in that lawsuit right now and I am guessing that its purpose was primarily to try to keep the city from moving ahead. Dave Connell and I think we should aggressively defend it if you go forward at the PUC and try to get it concluded as soon as we can. If we don't go forward I am again guessing that if the company prevail it will be dismissed or that we can reasonably settle it. I think its primary purpose was to get you not to go forward. There is always, however, the possibility that the company will see a failure to go forward as all of this was done to obstruct their legitimate attempt to merge with Philadelphia Suburban. They have alleged that in this lawsuit and that they will convert the suit to one for money damages. They currently aren't seeking money damages in that lawsuit, but they can convert it over pretty easily if that is what they were attempting to do and try to get the city to pay for the losses that they feel occurred as a result of the failed merger. If that happened that would be a considerable risk in exposure. Whenever there is that large an exposure the risk is considerable.

To give you a likelihood of an unfavorable outcome I will say as I say when I respond to auditors always it is neither probable nor remote. It is very hard to tell you what that could be, but I think it could be settled. My judgment now is that it could be settled if you walked away from it probably with very little consequence to the city. It is only if the company decides that they want a pound of flesh from you that that would happen.

Alderman LaRose

I have a parliamentary question – Mr. Upton stated something about a 2/3 vote – I thought we were doing a transfer so that is really a majority vote – am I correct?

Chairman Bolton

I think Attorney Upton was referring to a previous vote we had to take to put this matter on the ballot.

Robert Upton, Esq.

In order to get this thing off the ground, this Board of Aldermen had to vote by 2/3 majority to consider acquisition of the company.

Chairman Bolton

The vote we are considering now is by majority..

Alderman Deane

Could I ask Attorney Upton a question – I want to go back in time a little bit to when you first came to us and were sitting over there. You had stated that if the City was going to move forward they should start the eminent domain proceedings immediately.

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Robert Upton, Esq.

We are the city's consultants. We're not the regional district's consultants, and if an agreement isn't concluded with the regional district that is to the benefit of the city we are going ahead for the city.

Alderman McCarthy

A question for Attorney Upton regarding the 800-pound gorilla. Would you consider a Charter in which Nashua and Nashua alone gets to set the rates and in which Nashua and Nashua alone gets to determine the capital improvements plan, and in which Nashua and Nashua alone gets to determine whether bonding is issued to pay for anything one in which we are the 800 pound gorilla?

Robert Upton, Esq.

Yeah, and that is where I understood that the negotiations largely were getting to. The key thing is who controls the rates, who controls the spending. That is what is important in the regional district, and as long as Nashua can ultimately have that control I think the other issues are probably to some degree maybe window dressing. The important thing is who will set the rates. It should be – that is the benefit you get for your risk is that you get to set them.

Chairman Bolton

Unless there are other questions now this might be a good time to let Mr. SanSoucy proceed with his presentation to us.

George SanSoucy

What I have prepared tonight at the request of the Mayor's office and Mr. Connell your attorney is a very concise presentation on where we are, what we are proposing to purchase should you go ahead, and some very hard numbers on what that purchase is going to look like and why those numbers are the price. We are going to throw out the price tonight – it is a shot over the bow so to speak. I will guarantee you by 8:00 a.m. tomorrow morning everything I say tonight they will say is wrong and that is the way this process works.

I am the expert that was involved with Hudson – did the deal for the Town of Hudson and we actually took Consumers Water in the State of New Hampshire completely and basically threw them out of the State. I negotiated the sale of what is now Pennichuck East to Nashua so I do know what is involved in that sale. I also know how those towns got that system and I am going to hopefully enjoy helping you possibly resolve some of the regionalization issues to everyone's benefit hopefully because I know what is involved in that sale for example. While Philadelphia Suburban was trying to buy Pennichuck I had the good fortune of being hired by the County of Ashtabula, OH – the County took by eminent domain Philadelphia Suburban in Ashtabula, OH with the exception of the city of Geneva. It was the Consumer System – Philadelphia bought all of Consumer. Philadelphia bought the company that we ran out of Hudson in May. They have a division in OH and they had county property in Ashtabula. We successfully bought that system. The Judge in that case ordered the parties into a room with his personal mediator, Mr.



McLane, Graf,
Raulerson &
Middleton

Professional Association

NINE HUNDRED ELM STREET • P.O. BOX 326 • MANCHESTER, NH 03105-0326 City of Nashua, NH
TELEPHONE (603) 625-6464 • FACSIMILE (603) 625-5650

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APR 20 2004

Office of Corporation Counsel

OFFICES IN:
MANCHESTER
CONCORD
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HOMAS J. DONOVAN
603) 628-1337
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April 20, 2004

HAND DELIVERY
Marshall A. Buttrick, Clerk
Hillsborough County Southern District
30 Spring Street
Nashua, NH 03061-2072

Re: Pennichuck Corporation, Pennichuck Water Works, Inc.,
Pennichuck East Utility, Inc., Pittsfield Acqueduct Company, Inc.
v. City of Nashua

Dear Mr. Buttrick:

Enclosed please find a Writ of Summons for filing pursuant to Superior Court Rule 3.
Also enclosed please find the filing fee in the amount of \$145. Please attach your receipt of writ
form and return it to me for service upon the defendant.

Thank you for your assistance with this filing.

Very truly yours,

Thomas J. Donovan

TJD:jl
Enclosures
cc: David R. Connell, Esq. (by hand)
Robert Upton II, Esq. (by mail)

The State of New Hampshire

SUPERIOR COURT

HILLSBOROUGH COUNTY
SOUTHERN DISTRICT

() COURT

(x) JURY

WRIT OF SUMMONS

Pennichuck Corporation
Pennichuck Water Works, Inc.
Pennichuck East Utility, Inc.
Pittsfield Acqueduct Company, Inc.
4 Water Street
Nashua, NH 03060

v.

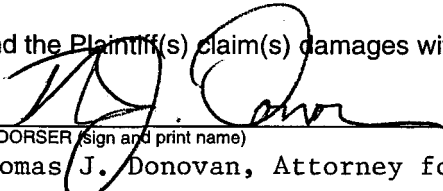
City of Nashua
229 Main Street
Nashua, NH 03060

The Sheriff or Deputy of any County is ordered to summon each defendant to file a written appearance with the Superior Court at the address listed below by the return day of this writ which is the first Tuesday of June, 2004,
YEAR MONTH

The PLAINTIFF(S) state(s):

See attached special declaration.

and the Plaintiff(s) claim(s) damages within the jurisdictional limits of this Court.


INDORSER (sign and print name)

Thomas J. Donovan, Attorney for Plaintiffs

April 20, 2004

DATE OF WRIT

NOTICE TO THE DEFENDANT

The Plaintiff listed above has begun legal action against you. **You do not have to physically appear** in Court on the return day listed above since there will be no hearing on that day. However, if you intend to contest this matter, you or your attorney must file a written appearance form with the Clerk's Office by that date. (Appearance forms may be obtained from the Clerk's Office.) You will then receive notice from the Court of all proceedings concerning this case. If you fail to file an appearance by the return day, judgment will be entered against you for a sum of money which you will then be obligated to pay.

Robert J. Lynn

Witness, ~~Walter X. Murphy~~, Chief Justice, Superior Court.



Marshall A. Buttrick, Clerk
NH Superior Court Hillsborough County
Southern District
30 Spring St.
Nashua NH 03060
(603) 883-6461
213-003-4


SIGNATURE OF PLAINTIFF/ATTORNEY

Thomas J. Donovan
Sarah B. Knowlton

PRINTED/TYPED NAME

McLane, Graf, Raulerson & Middleton, P.A.

ADDRESS

900 Elm St., P.O. Box 326
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THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
SOUTHERN DISTRICT

SUPERIOR COURT

Pennichuck Corporation, Pennichuck Water Works, Inc., Pennichuck East Utility, Inc.
and Pittsfield Aqueduct Company, Inc.

v.

City of Nashua

SPECIAL DECLARATION

Introduction

This case arises from Defendant City of Nashua's ("Nashua" or the "Defendant") blatant abuse of its authority under New Hampshire and United States law to deny the Plaintiffs' substantive due process rights under the United States and New Hampshire Constitutions, its condemnation of Plaintiffs' property without the payment of any compensation, its tortious interference with the Plaintiffs' merger contract with Philadelphia Suburban Corporation and its unfair business practices. Nashua's acts have caused, and continue to cause, significant damage to Plaintiffs Pennichuck Corporation, Pennichuck Water Works, Inc., Pennichuck East Utility, Inc., and Pittsfield Aqueduct Company, Inc.¹, which includes the loss of their right to conduct business freely, the right to be free from the inappropriate use of governmental power, and significant financial losses associated with the City's deliberate and wrongful acts.

¹ On February 4, 2004, the Plaintiffs filed a petition for declaratory judgment with this Court requesting that the Court declare RSA Chapter 38 unconstitutional and issue judgment regarding Nashua's authority in the first instance to pursue condemnation of the Plaintiffs' assets. On April 8, 2004, the Plaintiffs amended their petition for declaratory judgment to seek preliminary injunctive relief to prevent Nashua from pursuing its condemnation petition with the New Hampshire Public Utilities Commission. The Plaintiffs file this action seeking money damages as a result of Nashua's violation of its constitutional and other rights.

Parties

1. Plaintiff Pennichuck Corporation is a New Hampshire corporation whose shares are publicly traded on the NASDAQ stock exchange. Plaintiffs Pennichuck Water Works, Inc., Pennichuck East Utility, Inc. and Pittsfield Aqueduct Company, Inc. are Pennichuck Corporation's wholly owned subsidiaries (collectively, "Pennichuck"). All four plaintiffs have their principal place of business at 4 Water Street, Nashua, New Hampshire 03060.

2. Defendant City of Nashua is a municipality with its principal place of business at 229 Main Street, Nashua, New Hampshire 03060

Jurisdiction and Venue

3. This Court has subject matter jurisdiction of this Petition pursuant to RSA 491:7.

4. Initial venue is proper in this Court pursuant to RSA 507:9 because this is a transitory action and the parties have their principal places of business in this district.

Allegations Common to all Counts

(a) Pennichuck – The Oldest Continuously Operating Company in New Hampshire

5. Since 1852, Pennichuck Water Works, Inc. has provided water service within the City of Nashua and other municipalities. It is New Hampshire's oldest continuously operating company. Pennichuck Corporation, a holding company, has five subsidiaries: Pennichuck Water Works, Inc., Pennichuck East Utility, Inc., Pittsfield Aqueduct Company, Inc., Pennichuck Water Service Corporation, and The Southwood Corporation. Of these subsidiaries, Pennichuck Water Works, Inc., Pennichuck East Utility, Inc., and Pittsfield Aqueduct Company, Inc. are public utilities that are regulated by the New Hampshire Public Utilities Commission (the "PUC").

6. Pennichuck Corporation, through its regulated public utilities, provides water service to over 29,000 customers in Nashua, Amherst, Hollis, Merrimack, Milford, Bedford, Derry, Epping, Newmarket, Pittsfield, Plaistow, Salem, Atkinson, Hooksett, Litchfield, Londonderry, Pelham, Raymond, Sandown, and Windham. Through its subsidiary, Pennichuck Water Service Corporation, Pennichuck also operates other water systems that serve additional customers, including 4400 customers in Hudson. Pennichuck has a long record of providing superior water service at reasonable rates and is a recognized leader in water regionalization in New Hampshire.

(b) Attempted Merger with PSC

7. On April 29, 2002, Pennichuck entered into an Agreement and Plan of Merger (the "Merger Agreement") with Philadelphia Suburban Corporation ("PSC"). Under the Merger Agreement, Pennichuck was to become a direct, wholly owned subsidiary of PSC, and the Pennichuck utilities would remain subject to PUC regulation. On June 14, 2002, Pennichuck filed a petition with the PUC seeking approval of the merger.

8. At the time that the Merger Agreement was announced, Nashua had no plans to acquire Pennichuck. Its last exploration of that alternative occurred in the late 1950's, at the time of a water rate increase. Before that, Nashua had explored municipalization in 1911, when Pennichuck was considering extending service to Hudson. Both times, Nashua dropped its plans for municipalization.

9. Nashua officials (including Mayor Bernard Streeter and Alderman Brian McCarthy, collectively referred to as "City Leaders") expressed concern with the Merger Agreement because it meant that Pennichuck would become the subsidiary of a Pennsylvania business. These officials sounded the alarm that PSC might be sold to a French company, and

that Nashua water might be diverted and sold far afield. Nashua devoted a section of its web site to the Pennichuck transaction, with frequent updates designed to stir up popular opposition. The fact that the Pennichuck utilities would remain subject to PUC regulation gave these officials no solace, nor did the highly publicized fact that the minority French owner of PSC stock was actually selling off its interest in PSC.

10. Nashua intervened in the PUC proceeding on July 12, 2002, objecting to the Pennichuck-PSC merger. Both Pennichuck and PSC worked diligently to present the case for the proposed merger to the PUC and to respond to the numerous parties that intervened in the PUC proceeding. As a result of demands from Nashua and other intervenors working with Nashua, however, the procedural schedule for the case was much longer than either Pennichuck or PSC had originally hoped or expected. 10

(c) Municipalization Vote and Termination of Merger

11. Riding the swell of the uproar created by Nashua during the PUC proceeding on the PSC-Pennichuck merger, the Nashua Board of Aldermen on November 26, 2002 adopted a resolution calling for a speedy referendum. The referendum question asked if the voters would authorize Nashua "to acquire all or a portion of the water works system currently serving the inhabitants of [Nashua] and others." For this "feel good" question, Nashua provided the public with no information about the likely cost to acquire Pennichuck's assets, or about the rationale or legal basis to acquire assets beyond those needed to serve Nashua. Nor did the referendum identify the specific company or companies whose assets would be acquired. Instead, Nashua conducted a rushed special election seven weeks later, on January 14, 2003, in which approximately twenty percent of the voters participated, one of the lowest voter turnouts in recent years. Not surprisingly, the referendum passed by a vote of 6,525 to 1,870. 11 +

12. Nashua's actions were intended to and did cause PSC to reevaluate its merger plans. Given the apparent seriousness of Nashua's threat to condemn Pennichuck's entire water distribution and service system, PSC informed Pennichuck just before the referendum that it would reconsider the proposed merger, depending upon the results. As a direct result of Nashua's threat, and as intended by Nashua, the Merger Agreement was terminated soon after the referendum, on February 4, 2003. 12

13. The Pennichuck-PSC deal most likely would have received PUC approval without Nashua's interference. At the time the PSC-Pennichuck merger agreement was under consideration, the PUC staff had filed written testimony in support of PSC's acquisition of Pennichuck. 12

14. Since the termination of the Pennichuck deal, PSC (now known as Aqua American) has become the largest investor owned water utility in the United States serving over 2.5 million customers. PSC has consummated numerous other acquisitions and has begun operations in nine new states, which received all required approvals by various state public utility commissions. 12

15. On February 5, 2003, purporting to act pursuant to RSA 38:6, Nashua sent written notification to each of the Pennichuck regulated utilities, regardless of whether the utilities were providing service to Nashua or owned any assets there, inquiring whether each utility was willing to sell to Nashua its assets used to provide water service to "the inhabitants of Nashua and others." At the same time, having succeeded with its goal of killing the PSC transaction, Nashua stopped updating that portion of its web site devoted to Pennichuck. 13

16. On March 25, 2003, Pennichuck replied to Nashua's letters, informing Nashua that Pennichuck's board of directors had unanimously voted against selling any of the assets to 14

Nashua. The next day, Nashua replied that "The City will *now proceed* under RSA 38:10 to petition the Public Utilities Commission in order to complete the acquisition of the plant and property specified in Nashua's letters sent earlier under RSA 38:6." Over the next 10 months, City Leaders made more than a dozen public statements that it would take Pennichuck by eminent domain.

(d) Nashua Misleads the Public and Roils the Markets After Successfully Killing the PSC-Pennichuck Merger

17. Following Nashua's March 26, 2003 letter, Pennichuck held occasional meetings with City Leaders to discuss Nashua's interest in purchasing Pennichuck or its assets. These meetings were always held in response to requests by Nashua, and concerned only issues of a general nature. On information and belief, the superficial nature of these meetings was a consequence of Nashua never having retained a financial, tax, valuation or utility expert to advise it concerning the complex issues associated with establishing a price for the Pennichuck assets or to examine tax and transitional operations issues. In short, the meetings with City Leaders were of necessity perfunctory because Nashua never engaged in any meaningful due diligence review or analysis of the Pennichuck assets. Indeed, throughout the 2003 fall election cycle, there was very little public discussion or debate over what would be Nashua's largest capital expenditure in its 150 year history, yet City Leaders characterized the meetings as "active negotiations." They thus created the impression that there was more activity than actually occurred. Nashua plainly intended that these meetings create the appearance that the parties were talking about a potential acquisition, when in fact, Nashua made no serious effort to acquire Pennichuck. Simply put, the meetings were all form and no substance, and constituted an attempt by Nashua to draw out the threatened taking process as long as possible.

18. On November 20, 2003, the chief executive officer of Pennichuck, Donald Correll, received a telephone call from a newspaper reporter asking him to comment on an offer by Nashua to purchase Pennichuck's assets and a press conference to be held by the City that afternoon. At the time of the call, Mr. Correll was unaware of the press conference and had not received any offer from Nashua. Later that day, just prior to the City's press conference, Mr. Correll did receive a written offer hand-delivered by Nashua. In its offer Nashua proposed to purchase all of the assets of Pennichuck Corporation, the publicly traded holding company, which is comprised of far more than the assets of its regulated utility subsidiaries. As Nashua well knew, RSA Chapter 38 does not give it any authority to take all of Pennichuck Corporation. Approximately one hour later, Nashua's mayor held the press conference to discuss the offer. No one from Nashua called Pennichuck to discuss it. The proposal was plainly intended to pressure Pennichuck's board of directors into capitulating to Nashua's demands for a sale of Pennichuck's utility assets, and perhaps even its unregulated assets.

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19. Although the mayor's press conference on November 20, 2003 occurred after the stock exchange had closed for the day, trading in Pennichuck stock *prior* to the mayor's press conference soared to 26,360 shares, up from average daily trading of 2,800 shares.

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20. The unusual trading in Pennichuck's stock increased substantially immediately after the announcement when, on November 21, an unprecedented volume of 229,162 Pennichuck shares were traded, a volume that was nearly 10% of all of Pennichuck's outstanding shares and 137% of the highest daily trading volume that Pennichuck had ever experienced. This tremendous surge in trading was accompanied by wild gyrations in the market price of Pennichuck stock, which moved between the previous day's close of \$23.90 to as high as \$35.00.

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21. In conjunction with its proposal to acquire Pennichuck, City Leaders simultaneously undertook a concerted effort that was specifically designed to place pressure on Pennichuck's board of directors through its stockholders. The campaign was so intense and its effect so unsettling on the market that, at one point, NASDAQ halted trading in Pennichuck's stock. During and since this time period, Pennichuck has received literally hundreds of calls from confused and frustrated investors concerned about their stock. On information and belief, Nashua was also flooded with calls from Pennichuck investors. Nashua, including City Leaders, responded to these calls by giving Pennichuck investors false and misleading information about its November 20, 2003 offer, thereby causing further turmoil. In essence, Nashua conducted a hostile takeover campaign designed to pressure Pennichuck's board of directors into selling some or all of Pennichuck's assets, despite the board's prior determination that it was not in the best interests of Pennichuck's shareholders to do so.

17

22. By letter dated December 8, 2003, the NASD informed Pennichuck that it was undertaking an investigation of the unusual trading activity surrounding Nashua's November 20, 2003 offer. The investigation was time-consuming and costly to Pennichuck. Although, the NASD did not indicate the exact scope of its investigation, it was apparently intended to examine potential insider trading by persons with advance knowledge of Nashua's offer.

20

23. After Nashua made its public proposal, Pennichuck asked both Nashua and its counsel to clarify the terms of the offer. Pennichuck also asked to meet with Nashua's technical advisors to better understand Nashua's proposal. Nashua refused to provide Pennichuck with this opportunity or to provide any meaningful clarification of its offer. Based on its detailed review of Nashua's offer with its own financial and other advisors, Pennichuck rejected Nashua's offer on December 15, 2003. After Pennichuck rejected Nashua's proposal, City Leaders again

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threatened to proceed with an eminent domain filing at the PUC. Despite those threats, three more months passed without any such action. In an attempt to break the logjam, Pennichuck filed on February 4, 2004 a declaratory judgment action which specifically raised the issue of Nashua's delay.

(e) Nashua Finally Limpes into the PUC

24. Interestingly, less than three weeks after Pennichuck filed its declaratory judgment action, on February 23, 2004, City Leaders sought emergency funding to hire experts to support a condemnation of Pennichuck assets. Finally, on March 25, 2004, exactly one year after Pennichuck rejected Nashua's purchase request pursuant to RSA 38:6 and more than fourteen months after the city referendum, Nashua filed a petition with the PUC to initiate condemnation proceedings against the three Pennichuck utilities (No. DW-04-038, the "PUC Petition"). Despite the fact that it had over a year to prepare its filing at the PUC, Nashua filed a bare bones petition, with no supporting documentation. The petition was intended to give the appearance that Nashua was prepared to proceed with condemnation proceedings, and to mask its true intent of further delay. NEW

25. Rather than demonstrating a serious intent to pursue municipalization of the water system serving Nashua, the PUC Petition demonstrates the opposite. Fourteen months after the Nashua aldermen voted to proceed with taking Pennichuck assets, the City is no closer to pursuing seriously its repeated public threats of a taking. For example, the PUC Petition fails to comply with unambiguous PUC rules requiring all petitions to be accompanied by supporting written testimony. See N.H. Code of Admin. Rules Puc 202.11(a) and 204.01(b). The absence of supporting testimony strongly suggests that Nashua has not done the work necessary to NEW

support a legitimate taking, but rather has invoked its authority under RSA Chapter 38 to restrain Pennichuck and its utilities from freely operating.

26. Despite having taken great interest in Pennichuck's affairs for almost two years, City Leaders and its retained experts have made it clear that Nashua intends to use the lengthy and expensive municipalization process merely to "kick the tires" of the Pennichuck utilities to determine whether their assets are worth paying for. Specifically, Nashua's attorney told the Nashua Board of Aldermen that the PUC process will give Nashua "a second look at the acquisition after the price was set [by the PUC], so that if it was set too high, if everybody thought it was too high, that there was a procedure to get out."

27. Incredibly, Nashua apparently intends to use the PUC process (if it results in a decision not to acquire Pennichuck) as a vehicle to increase Pennichuck's real estate taxes. As Nashua's attorney stated: "You can now use that [PUC determined] value, that too high value that was too high for you to buy it – that is a determination of fair market value that you can use for setting your [tax] assessment level... [Pennichuck] is in the position where it wants to get the absolute most from the PUC, but if it gets too much and you back out that upper level is then going to be the level of taxation and they will get hammered with taxes so it is a double-edged sword."

28. Thus, if Nashua has its way, it will drag Pennichuck through a condemnation process at the PUC that is likely to last well over two years and cost millions of dollar for both the City and Pennichuck, only to walk away at the end if the City believes the PUC has set a price that is too high. Then, having failed to force Pennichuck to capitulate to its demands, Nashua intends to extract its revenge by the use of the eminent domain price as an artificial

justification for an illegal spot revaluation to obtain higher tax payments from Pennichuck.

There could not be a more improper use of municipal powers.

29. To compound its abusive use of the eminent domain process, Nashua is using RSA Chapter 38 to attempt to acquire all of the assets of Pennichuck Water Works, Inc., Pennichuck East Utility, Inc. and Pittsfield Aqueduct Company, Inc. on behalf of a regional water district that does not yet exist and that itself has no eminent domain authority.² See, RSA 38:2-a, VI. In addition, five of the towns served by the Pennichuck utilities are not participating at all in the discussions regarding a regional water district³, yet Nashua presumes that it should serve as their water utility.

(f) The Damage Caused to Pennichuck

30. Nashua's activity relating to Pennichuck has been nothing less than a naked use of governmental power designed, first, to kill the PSC deal and, now, to ensure both that Pennichuck will not be able to conduct its business freely in a manner designed to serve its customers and enhance shareholder value and that no other potential suitor will have an interest in acquiring Pennichuck. This abusive exercise of governmental power has greatly limited Pennichuck's ability to operate its business in a profitable manner and, moreover, has effectively enabled Nashua to condemn Pennichuck's assets indirectly, without paying the cost of condemning them directly.

31. Since at least November 2002, Nashua has held the specter of municipalization over Pennichuck's corporate future, which has caused, and continues to cause, substantial

² On April 5, 2004, Pennichuck filed a motion to dismiss the PUC Petition because of its failure to comply with the PUC's rules and because of Nashua's lack of authority to take assets of any of the Pennichuck utilities that are not used to provide water service within the City.

³ East Derry (village district), Epping, Newmarket, Plaistow, Atkinson and Sandown.

damage to Pennichuck, its employees, and shareholders. Pennichuck has spent more than \$400,000 in legal and other fees in connection with Nashua's threatened municipalization process and continues daily to incur substantial expenses associated with the threatened taking.

32. Pennichuck has incurred \$2.2 million in merger related expenses and termination fees related to the PSC transaction -- a deal which Nashua intended to and did kill through its threats of municipalization.. These costs would not have been borne by Pennichuck investors had the PSC transaction been consummated.

33. In addition to these out of pocket expenses, Pennichuck management has spent, and continues to spend, a substantial amount of time every day responding to Nashua's threatened municipalization. As a result of Nashua's actions, it has become more difficult for Pennichuck to operate its water utility functions and to maintain its staff morale. Employees are concerned about the security of their jobs, and Pennichuck's costs have risen.

34. Because of the state of suspended animation in which Pennichuck now exists, it has become significantly more difficult for Pennichuck to pursue opportunities for either the purchase of new regulated water systems or contract operations of existing water systems. For example, a number of private water system owners and municipal officials considering outsourcing operation of their water systems have expressed reluctance over the past year to enter into meaningful negotiations with Pennichuck while Nashua's threat of municipalization remains. Based upon Pennichuck's past business growth experiences, Nashua's actions have cost Pennichuck approximately \$1 to 1.5 million in revenues from lost business opportunities over the past two years. Similarly, existing and potential employees worry about the security of their employment with Pennichuck and its subsidiaries, making it more difficult to retain and attract workers. Likewise, Pennichuck needs to be able to access capital markets to finance its

ongoing utility upgrades and investments, but that access has been made significantly more difficult, if not impossible, because of the looming threat of municipalization by the City. In short, Nashua has placed handcuffs on Pennichuck, restraining it from pursuing business opportunities for the indeterminate future and making it significantly more difficult and more expensive for Pennichuck to conduct its normal business operations.

35. With Pennichuck in its lock grip as a result of the municipalization process, City Leaders have used false and misleading statements to Pennichuck investors in order to cause even further turmoil for Pennichuck and its shareholders. Pennichuck's stock price has gyrated wildly at times, and it is likely that investors have suffered direct monetary harm by trading on misleading information provided by City Leaders surrounding its November 20, 2003 proposal. On November 21, 2003 alone, between \$7-8 million of shares of Pennichuck stock were traded based on Nashua's announcement and the misleading statements of City Leaders. 29

36. Nashua's actions have already led to an NASD investigation of the circumstances surrounding City Leader's actions and its November offer. Pennichuck has incurred more than \$50,000 in expenses associated with the NASD investigation, solely based on Nashua's actions. This expense, combined with additional operating costs caused solely as a result of Nashua's actions, aggregate to \$400,000. 30

37. Pennichuck estimates that it will cost \$1 to 1.5 million or more to defend itself in the PUC, an amount similar to what Nashua expects to spend.

38. Had the PSC transaction been consummated in accordance with the original Merger Agreement, the collective Pennichuck shareholders' investment would today be worth approximately \$20-30 million greater than the current collective Pennichuck share value (based upon PSC trading ranges in 2004). 31

39. Collectively, the expenses and lost business opportunities set forth in this subsection incurred by Pennichuck to date and estimated to be incurred will total as much as \$6 million, plus shareholder investment losses of \$25-30 million.

40. These expenses and investment losses are quite significant for Pennichuck, which has averaged only approximately \$1.9 million in annual income from its water service operations over the last 5 years. 32

41. In essence, Nashua has attempted to reap the control benefits of a condemner pursuant to RSA 38 for an improper purpose and without assuming any of the financial and operational obligations that accompany those benefits. 33

COUNT I
(Fourteenth Amendment Due Process – Civil Rights Deprivation -- 42 U.S.C. § 1983)

42. Plaintiffs incorporate in this Count I all of the allegations made in the preceding paragraphs as if fully set forth herein.

43. Nashua invoked the authority granted to municipalities pursuant to RSA Chapter 38 initially in an effort to kill the PSC-Pennichuck merger and then to prevent Pennichuck from the free and unencumbered use of its property. Nashua's actions and public statements demonstrate that it threatened and then invoked the RSA Chapter 38 municipalization process to restrain Pennichuck's activities for as long as possible, rather than to proceed in a timely fashion to purchase its assets. In particular, Nashua, under the guise of the municipalization process, has laid claim to the assets of all three of the Pennichuck utilities even though only Pennichuck Water Works provides service or owns assets in Nashua. At the same time, through its hostile takeover attempt in November 2003, Nashua sought to force Pennichuck to sell not only its

regulated business assets but also its unregulated business assets because it knew that it lacked the legal authority to accomplish the eminent domain taking it really wanted to accomplish.

44. Moreover, in the unlikely event that Nashua does pursue the RSA Chapter 38 process through to completion at the PUC, it has no commitment to taking the Pennichuck assets, and has already stated its intention to use the results of the PUC process as the basis for an illegal property revaluation.

45. Nashua's actions under color of RSA 38:1-13 are not justified by any legitimate state interest in that the statute provided Nashua with an indefinite period of time to petition the PUC for condemnation of its assets; and now that Nashua has finally filed its petition, RSA 38:9-11 subjects Pennichuck to a very lengthy and expensive condemnation process. At the end of that lengthy process, should the PUC authorize the proposed taking and determine compensation payable to Pennichuck, Nashua can still abandon its condemnation efforts, a condemnation process that it can then begin again, or simply threaten to begin again, at any time in order to keep Pennichuck frozen and unable to conduct normal business. Nashua's actions have plainly deprived Pennichuck of its due process rights under the Fourteenth Amendment to the United States Constitution and, therefore, Nashua is liable to Pennichuck for money damages pursuant to 42 U.S.C. §1983.

46. Nashua's actions under color of law relating to the Merger Agreement and municipalization and related behavior are not justified by any legitimate state interest, but rather are motivated by a desire of local government officials to oppress the rights of Pennichuck and its shareholders. As a result of these actions, Nashua has deprived Pennichuck of its due process rights under the Fourteenth Amendment to the United States Constitution and Nashua is liable to Pennichuck for money damages pursuant to 42 U.S.C. § 1983.

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47. As a direct and proximate result of these constitutional violations, the Plaintiffs have incurred, and will continue to incur, substantial damages, which include, without limitation, lost business opportunities, lost profits, increased operating costs, legal fees (including legal fees recoverable pursuant to 42 U.S.C. § 1988), great inconvenience, hardship and suffering, and loss of the use and enjoyment of their property, in an amount within the jurisdictional limit of this Court.

COUNT II
(New Hampshire Constitution Due Process – Civil Rights Deprivation)

48. Plaintiffs incorporate in this Count II all of the allegations made in the preceding paragraphs as if fully set forth herein.

49. Nashua's actions under color of RSA 38:1-13 are not justified by any legitimate state interest in that it provided Nashua with an indefinite period of time to petition the PUC for condemnation of its assets; and now that Nashua has finally filed its petition, RSA 38:9-11 subjects Pennichuck to a very lengthy and expensive condemnation process. At the end of that lengthy process, should the PUC authorize the proposed taking of Pennichuck's assets and determine compensation payable to Pennichuck, Nashua has the right to abandon its condemnation efforts, a condemnation process that it can then begin again, or simply threaten to begin again, at any time in order to keep Pennichuck frozen and unable to conduct normal business. As a result of these actions, Nashua has deprived Pennichuck of its due process rights under N.H. CONST. Pt.1, Art. 2 and 14 and its right to engage in commerce under Pt. 3, Art. 83. Nashua, therefore, is liable to Pennichuck for money damages.

50. Nashua's actions under color of law relating to the Merger Agreement and municipalization and related behavior are not justified by any legitimate state interest, but rather are motivated by a desire of local government officials to oppress the rights of Pennichuck and

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its shareholders. As a result of these actions, Nashua has deprived Pennichuck of its due process rights under N.H. CONST. Pt.1, Art. 2 and 14 and its right to engage in commerce under Pt. 3, Art. 83 and Nashua is liable to Pennichuck for money damages pursuant to 42 U.S.C. § 1983

51. As a direct result of these constitutional violations, the Plaintiffs have incurred, and will continue to incur, substantial damages, which include, without limitation, lost business opportunities, lost profits, increased operating costs, legal fees, great inconvenience, hardship and suffering, and loss of the use and enjoyment of their property, in an amount within the jurisdictional limit of this Court.

COUNT III
**(Fifth and Fourteenth Amendment Inverse Condemnation – Civil Rights
Deprivation – 42 U.S.C. § 1983)**

(at II)
D)

52. Plaintiffs incorporate in this Count III all of the allegations made in the preceding paragraphs as if fully set forth herein.

53. Nashua's actions and public statements over a prolonged period of time have greatly depressed the value of Pennichuck's property by limiting its business opportunities and casting a pall upon its entire operations. Nashua delayed the eminent domain process in an effort to avoid spending money on both the legal process required to take those assets and on the purchase price necessary to acquire them. Nashua has essentially created and taken advantage of a free unlimited option to condemn Pennichuck's assets. As a result, part of Pennichuck's property has already been taken without compensation.

54. Nashua's actions under color of RSA 38:1-13 constitute a taking of a part of Pennichuck's assets which has deprived Pennichuck of its property rights under the Fifth and Fourteenth Amendments of the United States Constitution and Nashua is liable to Pennichuck for money damages pursuant to 42 U.S.C. § 1983.

55. Nashua's actions under color of law relating to the Merger Agreement and municipalization and related behavior constitute a taking of a part of Pennichuck's assets which has deprived Pennichuck of its property rights under the Fifth and Fourteenth Amendments of the United States Constitution, and Nashua is liable to Pennichuck for money damages pursuant to 42 U.S.C. § 1983.

56. As a direct result of these constitutional violations, the Plaintiffs have incurred, and will continue to incur, substantial damages, which include, without limitation, lost business opportunities, lost profits, increased operating costs, legal fees (including legal fees recoverable pursuant to 42 U.S.C. § 1988), great inconvenience, hardship and suffering, and loss of the use and enjoyment of their property, in an amount within the jurisdictional limit of this Court.

COUNT IV

(New Hampshire Constitution Inverse Condemnation – Civil Rights Deprivation)

57. Plaintiffs incorporate in this Count IV all of the allegations made in the preceding paragraphs as if fully set forth herein.

58. Nashua's actions and public statements over a prolonged period of time have greatly depressed the value of Pennichuck's property by limiting its business opportunities and casting a pall upon its entire operations. Nashua delayed the eminent domain process in an effort to avoid spending money on both the legal process required to take those assets and on the purchase price necessary to acquire them. Nashua has taken and enjoyed a free unlimited option to condemn Pennichuck's assets, which has placed Pennichuck into a state of suspended animation that deprives Pennichuck of the rewards of commerce and constitutes a taking of a part of Pennichuck's property for which it has not been compensated.

Count
IV
D)

59. Nashua's actions under color of RSA 38:1-13 constitute an unconstitutional scheme to provide it with a free unlimited option to condemn, which deprives Pennichuck of its right to engage in commerce and of a part of its property contrary to N.H. CONST. pt. 1, art. 12; pt. 3, art. 83

60. Nashua's actions under color of law relating to the Merger Agreement and municipalization and related behavior provide Nashua with a free unlimited option to condemn, which deprives Pennichuck of its right to engage in commerce and of a part of its property contrary to N.H. CONST. p. 1, art. 12; pt. 3, art. 83.

61. Pennichuck has suffered, and continues to suffer, damages as a direct and proximate result of Nashua's actions, including lost business opportunities, lost profits, increased operating costs, legal fees, great inconvenience, hardship and suffering, and loss of the use and enjoyment of their property.

COUNT V
(Intentional Interference with Contractual Relations)

62. Plaintiffs incorporate in this Count V all of the allegations made in the preceding paragraphs as if fully set forth herein.

63. On April 29, 2002, Pennichuck and PSC entered into a definitive Merger Agreement in which Pennichuck would become a direct, wholly owned subsidiary of PSC. Nashua, always intent on disrupting this transaction, intervened in the case at the PUC in which the Merger Agreement was being considered and created a web page to stir up popular opposition. In its intervention, Nashua objected to the PSC-Pennichuck merger, and actively worked toward killing the PSC-Pennichuck deal. While working to slow the progress of the PUC's review of the transaction, the Nashua Board of Aldermen began the legal process of trying

to take Pennichuck's utility assets by eminent domain, a move that ultimately caused the death of the Merger Agreement, after Pennichuck had spent \$2.2 million in expenses relating to the merger. Content with having killed the deal, Nashua immediately stopped updating its Pennichuck web page and delayed filing its condemnation petition with the PUC for over a year, making its filing only *after* Pennichuck brought a court action seeking a ruling that Nashua had waited too long to act. Nashua's intentional behavior, including use of the RSA Chapter 38 process to cause the wrongful termination of the Merger Agreement, without a reasonable belief as to the lawfulness of its behavior, constitutes intentional interference with contract.

64. As a direct and proximate result of Nashua's action, Pennichuck has suffered, and continues to suffer, damages, including lost business opportunities, increased operating costs, and legal fees.

COUNT VI
(Unfair Business Practices)

65. Plaintiffs incorporate in this Count VI all of the allegations made in the preceding paragraphs as if fully set forth herein.

66. Nashua's actions and public statements over a prolonged period of time have disparaged Pennichuck's services and business by false and misleading representations of fact, including, but not limited to Nashua's statements relating to Nashua's intentions with respect to the acquisition of a portion of Pennichuck's assets, and relating to its proposals for acquisition of some or all of Pennichuck's assets, all of which were intended to devalue Pennichuck and interfere with its business prospects.

67. Nashua's actions and public statements constitute an unfair, deceptive act or practice in the conduct of a trade or business within New Hampshire by, among other matters,

disparaging Pennichuck's services and business by false and misleading statements, contrary to RSA 358-A:2, VIII, and without a reasonable belief as to the lawfulness of its behavior.

68. As a direct and proximate result of Nashua's violation of RSA 358-A, Pennichuck has incurred, and will continue to incur, substantial damages which include, without limitation, lost business opportunities, lost profits, increased operating costs, legal fees (including legal fees recoverable pursuant to RSA 358-A:10), great inconvenience, hardship and suffering, and loss of the use and enjoyment of their property, which damages may be increased pursuant to RSA 358-A:10, I as a willful and knowing violation, in an amount within the jurisdictional limit of this Court.